

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 2108

INTRODUCER: Criminal Justice Committee and Senator Crist

SUBJECT: Vehicular Accidents Resulting in Death

DATE: April 20, 2006

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Eichin	Meyer	TR	Favorable
2. Cellon	Cannon	CJ	Fav/CS
3. _____	_____	JU	_____
4. _____	_____	JA	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The bill requires the imposition of a two year minimum mandatory sentence for the offense of leaving the scene of an accident involving death where the offender was driving under the influence. The bill also requires that a judge order an offender to make restitution to the victim upon conviction for the offenses of leaving the scene of an accident involving injury or death. The bill provides for the imposition of "victim injury points" for these offenses. This will have the effect of significantly increasing the lowest permissible sentence that a judge can impose for the offense of leaving the scene of an accident involving death.

The bill requires the imposition of a four year minimum mandatory sentence for the offense of DUI manslaughter.

This bill substantially amends the following sections of the Florida Statutes: 316.027, 316.193 and 921.0021.

II. Present Situation:

Leaving the Scene of an Accident Involving Injury or Death.

Section 316.027(1), F.S., provides that a driver of a vehicle *involved in* a crash resulting in the injury or death of any person must immediately stop the vehicle at or near the scene of the crash, and must remain at the scene until he or she has complied with the requirements of s. 316.062, F.S. It is not necessary that a person *cause* the accident – merely that he or she leaves the scene of the accident – in order to be charged under s. 316.027(1), F.S.

A willful violation of this provision is a third degree felony where injury occurs and is commonly known as leaving the scene of an accident involving injury. A willful violation of this

provision is a second degree felony where death occurs and is commonly known as leaving the scene of an accident involving death. The offense of leaving the scene of an accident involving death is a Level 7 felony. The sentence for this offense for a first time offender ranges from 21 months to 15 years in prison.

Section 316.062, F.S., requires a driver of a vehicle involved in a crash resulting in property damage, injury, or death to provide certain information to the person who was injured or whose property was damaged or to law enforcement investigating the crash. The driver must provide his or her name, address, vehicle registration number, and driver's license. The driver also must render reasonable assistance to the injured person. A violation of this provision is considered a nonmoving violation punishable by a \$30 fine. s. 318.18(2), F.S.

Restitution.

A judge is required to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode unless the judge finds clear and compelling reasons not to order such restitution.

Generally, restitution cannot be ordered against a person convicted of the offense of leaving the scene of an accident involving injury or death. This is so because the offense of *leaving the scene* does not contain an element which establishes a causal connection between the injury or death and the act of leaving the scene of a crash a person was simply *involved in* (but did not necessarily *cause*).

In *Schuetz v. State*, 822 So.2d 1275 (Fla 2002), the defendant was charged with and convicted of driving with a suspended license and leaving the scene of an accident involving an injury. The Supreme Court of Florida held that:

“[T]he mere occurrence of an accident, while the defendant is engaged in the criminal offense of driving with a suspended license does not as a matter of law mandate the award of restitution for the damages arising out of the accident. An award of restitution requires the existence of a causal relationship between the criminal offense of driving with a suspended license and the accident that resulted in the damage or loss.”

In the opinion, the Supreme Court relied on *State v. Williams*, 520 So.2d 276 (Fla. 1988), an earlier opinion which struck an award of restitution for the offense of leaving the scene of an accident and noted the lower court's assertion that it “is undisputed that restitution could not be ordered [based on] the conviction for leaving the scene of an accident.” *Id.* at 1277. See also, *Longshore v. State*, 655 So.2d 1139 (Fla. 5th DCA 1995); *Triplett v. State*, 709 So.2d 107 (Fla. 5th DCA 1998)(court certified question of whether court may impose restitution for damages which are related to, but not caused by, the offense for which the defendant pleads guilty; review was denied by Florida Supreme Court, *see State v. Triplett*, 725 So.2d 1110 (Fla. Sep 25, 1998).

Driving Under the Influence.

The offense of driving under the influence is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

A person who is in violation of the above provision, who operates a vehicle and who by reason of such operation, causes or contributes to causing the death of any human being commits DUI manslaughter. The offense is a second degree felony. The offense is a first degree felony if at the time of the crash, the person knew or should have known that the crash occurred and failed to give information and render aid as required by s. 316.062, F.S., described above.

The offense of DUI manslaughter (where the offender did not leave the scene) is ranked in level 8 of the offense severity ranking chart. A key factor in calculating the lowest permissible sentence for this offense is the large number of victim injury points that must be scored for the death of the victim. This results in a lowest permissible sentence for a first time offender of 124.5 months (10 years and 4.5 months) in prison. The maximum sentence, based on the fact that the offense is a second degree felony, is 15 years in prison.

Victim Injury.

For sentencing purposes, victim injury is defined to mean the "physical injury or death suffered by a person *as a direct result*" of the criminal offense. Generally, victim injury points are not assessed for the offense of leaving the scene of an accident involving injury or death because the injury or death is not a direct result of the offender leaving the scene.

There are only two reported decisions affirming an assessment of victim injury points for leaving the scene on an accident involving death. In both cases, there was evidence that the victim was dragged after being hit.

In *May v. State*, 747 So.2d 459 (Fla. 4th DCA 1999), the offender dragged the victim for 500 feet and there was evidence that the dragging was a direct cause of death. In *Sims v. State*, 869 So.2d 45, 48 (Fla. 5th DCA 2004), the court concluded that because there was evidence that the victim was dragged after being hit by the offender's vehicle, "there was sufficient causal connection between the leaving of the accident scene and the death to justify the imposition of victim injury points."

Criminal Punishment Code.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the

offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure." The permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years.

III. Effect of Proposed Changes:

Minimum Mandatory Sentence.

Leaving the Scene of an Accident

This bill amends s. 316.027(1)(b), F.S., to provide that a person who commits the offense of leaving the scene of an accident involving death, while driving under the influence, shall be sentenced to a mandatory minimum term of imprisonment of 2 years.

Because the lowest permissible sentence for this offense, as a result of the addition of victim injury points as required by this bill, will be greater than 2 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a downward departure sentence of less than 2 years in prison in cases in which a defendant is convicted of leaving the scene of an accident while driving under the influence.

DUI Manslaughter

The bill provides that a person convicted of DUI manslaughter must be sentenced to a mandatory term of imprisonment of 4 years.

Because the lowest permissible sentence for this offense is already greater than 4 years, this provision would not increase the sentence in cases in which the offender is sentenced in excess of the lowest permissible sentence but would have the effect of prohibiting a judge from giving a downward departure sentence of less than 4 years in prison in cases in which a defendant is convicted of DUI manslaughter.

Restitution.

The bill provides that if the driver of a vehicle commits the offense of leaving the scene of an accident involving injury or death, the court must order the driver to make restitution to the victim for any damage or loss unless the court finds clear and convincing reasons not to order the restitution.

Consistent with s. 775.089(1)(a), F.S., the restitution statute, the bill provides that:

- restitution may be monetary or non-monetary
- the court must make the payment of restitution a condition of probation in accordance with s. 948.03, F.S.
- requiring the court to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crime Compensation Trust Fund pursuant to ch. 960, F.S.
- payment of an award by this trust fund creates an order of restitution

Victim Injury.

The bill amends s. 921.0021, F.S., to provide that victim injury points may be assessed when a person is convicted of leaving the scene of an accident involving death or injury if the court finds the offender caused injury or death. This would have the effect of significantly increasing the lowest permissible sentence for these offenses in most cases as follows.

The offense of leaving the scene of an accident involving injuries is ranked in Level 5 of the ranking chart. The sentence for this offense for a first time offender ranges from any non-state prison sanction to five years in prison. The addition of victim injury points would change the lowest permissible sentence, depending on the severity of the injury. If the victim injury was severe, the lowest permissible sentence would increase to 30 months in prison; if the injury was moderate, the lowest permissible sentence would be increased to 13.5 months in prison; and if the victim injury was slight, the lowest permissible sentence would remain any non-state prison sanction. The maximum sentence for the offense would still be five years in prison.

The offense of leaving the scene of an accident involving death is a Level 7 felony. The sentence for this offense for a first time offender ranges from 21 months to 15 years in prison. The addition of victim injury points for the death of the victim would greatly increase the lowest permissible sentence for the offense to 111 months (9 years and 3 months) in prison.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill will require a defendant who commits the offense of leaving the scene of an accident involving injury or death to pay restitution for the victim's injuries unless the court finds a clear and convincing reason not to order the restitution. Presumably lack of causation would constitute such a reason.

C. Government Sector Impact:

During the 2005 Legislative Session, the Criminal Justice Impact Conference determined the prison bed impact of this bill on the Department of Corrections to be indeterminate - minimal.

The bill requires the imposition of a 2 year minimum mandatory sentence for the offense of leaving the scene of an accident involving death. Further, as described in the "Effect of Proposed Changes" section of this analysis, the addition of victim injury points for the offense of leaving the scene of an accident will significantly increase the lowest permissible sentence that a judge can impose for that offense. According to information supplied by the Office of Economic and Demographic Research (EDR), 46 percent of the 54 defendants that were convicted of leaving the scene of an accident involving death, for which they have records, received a prison sentence during FY 2003-04. Based on the fact that the lowest permissible sentence for this offense with the addition of victim injury points would be 9.25 years, it is expected that a higher percentage of these offenders would be sentenced to prison. Also, even if a judge were to give a downward departure sentence, because of the minimum mandatory provision, the sentence would have to be at least 2 years in prison.

The staff of EDR also indicated that they have information relating to 591 offenders being sentenced for the offense of leaving the scene of an accident involving injuries. Of these, 19.8 percent received a prison sentence. Based on the addition of the victim injury points, it is expected that a larger percentage of these offenders would receive a prison sentence under the bill. However, because victim injury points are not generally assessed for the offense of leaving the scene of an accident involving injury, it is difficult to predict what percentage of the victim injury points assessed for this offense in the future will be slight, moderate, or severe. Victim injury points for moderate or severe injury for this offense would result in a lowest permissible sentence of 13.5 months or 30 months respectively for a first time offender.

The bill will also prohibit a judge from giving a downward departure sentence of less than 4 years in prison for DUI manslaughter.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are likely to be issues with regard to proving the offense of leaving the scene of an accident while driving under the influence. If the driver has left the scene, and is therefore either no longer behind the wheel of the vehicle at the time of law enforcement involvement, or has had an opportunity to consume alcohol *after* the accident occurred, elements that must be proven will be difficult, if not nearly impossible, to prove.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
